



**BILLING CODE 3510-33-P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 742 and 748**

**[Docket No. 170104015-7015-01]**

**RIN 0694-AH26**

**Amendments to the Export Administration Regulations Implementing an Additional Phase of India–U.S. Export Control Cooperation**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement the India–U.S. Joint Statement of June 7, 2016 (June Statement), which recognized the United States and India as Major Defense Partners. This rule amends the EAR by establishing a licensing policy of general approval for exports or reexports to or transfers within India of items subject to the EAR and controlled only for National Security or Regional Stability reasons. In addition, BIS amends the end use and end user provisions of the Validated End User (VEU) authorization to state that items obtained under authorization VEU in India may be used for either civil or military end uses *other* than those that are for use in nuclear, "missile," or chemical or biological weapons activities.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Alexander Lopes, Director, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, Phone: (202) 482-3825.

**SUPPLEMENTARY INFORMATION:**

**Background**

As announced by President Obama and India's Prime Minister Singh in a U.S.-India Joint Statement on November 8, 2010, the United States and India formally committed to work together to strengthen the global nonproliferation and export control framework and further transform bilateral export control cooperation to realize the full potential of the global strategic partnership between the two countries. The leaders agreed to take mutual steps to expand cooperation in civil space, defense, and other high-technology sectors. The steps agreed to by the United States included the removal of Indian defense and space-related entities from the Entity List (Supplement No. 4 to part 744 of the EAR) and the realignment of India in U.S. export control regulations. Additionally, the 2010 Joint Statement announced that the United States "intend[ed] to support India's full membership in the four multilateral export control regimes (Nuclear Suppliers Group, Missile Technology Control Regime, Australia Group, and Wassenaar Arrangement) in a phased manner, and to consult with regime members to encourage the evolution of regime membership criteria," while maintaining these regimes' core principles, "as the Government of India took steps towards the full adoption of the regimes' export control requirements to reflect its prospective membership, with both processes moving forward together."

To date, BIS has published two rules implementing the President's and Prime Minister's commitments. The first rule, published on January 25, 2011 (76 FR 4228), revised certain export

and reexport controls for India, including the removal of nine Indian entities from the Entity List. In addition, BIS amended the EAR to remove India from Country Groups D:2, D:3 and D:4, and added India to Country Group A:2.

In the second rule, published January 23, 2015 (80 FR 3463), BIS amended the EAR, in furtherance of the United States' commitment to the bilateral understanding, by removing India from Crime Control (CC) columns 1 and 3 and from Regional Stability (RS) column 2 on the Commerce Country Chart in Supplement No. 1 to Part 738 of the EAR, because the Government of India had taken appropriate steps to ensure that U.S.-origin items controlled for CC and RS reasons are not reexported from India without a license. Although the second rule removed the license requirement for the majority of items controlled for CC or RS reasons and destined for India, a license requirement remained for items controlled under export control classification numbers (ECCNs) 6A003.b.4.b and 9A515.e for RS column 2 reasons when destined to India.

In addition, BIS published on August 17, 2016, a third rule (81 FR 54721) that was not specific to the bilateral understanding but nonetheless removed a related requirement to include a destination control statement on shipping documents for items controlled for CC columns 1 and 3, and RS column 2 reasons when the items are exported to India.

### *New Amendments*

In this rule, BIS implements an additional step in furtherance of the U.S.-India bilateral understanding and global strategic partnership. On June 7, 2016, the United States and India issued a Joint Statement entitled, "The United States and India: Enduring Global Partners in the 21<sup>st</sup> Century." Specifically, in this rule, BIS implements the understanding between the United States and India expressed in the June Statement regarding U.S. export control policy toward

India by establishing a new paragraph (b)(8) in § 742.4 (National Security) and a new paragraph (b)(5) in § 742.6 (Regional Stability). These new provisions establish licensing policies of general approval for exports or reexports to or transfers within India of items subject to the EAR, including “600 series” military items, for civil or military end uses in India or for the ultimate end use by the Government of India, for reexport to a Country Group A:5 country, or for return to the United States, so long as such items are not for use in nuclear, "missile," or chemical or biological weapons activities. This rule does not amend any other licensing policies in part 742 such as those with respect to Missile Technology items. The rule also does not amend any licensing policies pertaining to naval nuclear propulsion. The Country Group A:5 countries are listed in Supplement Number 1 to part 740 and are often informally referred to as the "STA-36" countries because they are the list of countries to which exports under License Exception Strategic Trade Authorization are authorized pursuant to the conditions and limitations of section 740.20(b)(3).

In addition, BIS amends the end user and end use provisions of the Validated End User (VEU) authorization in §748.15 (Authorization Validated End-User (VEU)), paragraphs (a) (eligible end user provision) and (d) (end-use restrictions), to allow that items obtained under authorization VEU in India may be used for civil or military end uses other than those that involve items controlled for MT reasons, or if for use in nuclear, "missile," or chemical or biological weapons activities. Section 748.15(c) does not change the January 23, 2015 (80 FR 3463), amendment to the EAR regarding the export and reexport of Crime Control (CC) columns 1 and 3 items to India. Conforming changes are made to paragraph (7)(ii) in Supplement No. 8 to Part 748 (Information Required in Requests for Validated End-User (VEU) Authorization). No other material changes are made in this rule to the VEU program, such as the process for

approving a VEU, VEU compliance obligations, the rules pertaining to VEUs in China, or the process of identifying approved VEUs and eligible items and facilities in Supplement No. 7 to Part 748.

## **Export Administration Act**

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended most recently by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

## **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This rule involves a collection of information approved under OMB control number 0694-0088—Simplified Network Application Process - Redesign System (SNAP-R) and the Multipurpose Export License Application, which carries an annual estimated burden of 31,833 hours. BIS believes that this rule will not have a material impact on that burden because this rule does not increase or decrease BIS’s existing licensing requirements. To the extent that it has any impact, BIS believes that the benefits of this rule justify any additional (and likely minimal) additional burden it might create. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at [jseehra@omb.eop.gov](mailto:jseehra@omb.eop.gov) or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). This rule advances essential foreign policy, national security, and nonproliferation goals of the United States and a critical strategic partner, India. Subsequent agency deliberations following the June Statement culminated in this framework for regulatory implementation of the Statement. Delay in implementing this rule to obtain public

comment or for any other reason would undermine the good faith timeliness in which the United States signed, and now implements, the Statement and, therefore, would undermine the foreign policy objectives that the rule is intended to serve. Further, no other law requires that a notice of proposed rulemaking or an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required for this rule under 5 U.S.C. 553, or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

## **List of Subjects**

### *15 CFR Part 742*

Exports, Terrorism.

### *15 CFR Part 748*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, 15 CFR parts 742 and 748 of the EAR (15 CFR parts 730 through 774) are amended as follows:

## **PART 742—CONTROL POLICY—CCL BASED CONTROLS**

1. The authority citation for 15 CFR part 742 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3

CFR, 2001 Comp., p. 783; Presidential Determination 2003-23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

2. Section 742.4 is amended by adding paragraph (b)(8) to read as follows:

**§ 742.4 National security.**

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(b)\*\*\*

(8) For India, there is a general policy of approval for license applications to export, reexport, or transfer items, including "600 series" items, for civil or military end uses in India, for ultimate end use by the Government of India, for reexport to countries in Country Group A:5, or for return to the United States, so long as such items are not for use in nuclear, "missile," or chemical or biological weapons activities.

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3. Section 742.6 is amended by adding paragraph (b)(7) to read as follows:

**§ 742.6 Regional Stability.**

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(b)\*\*\*

(7) For India, there is a general policy of approval for license applications to export, reexport, or transfer items, including "600 series" items, for civil or military end uses in India, for ultimate end use by the Government of India, for reexport to countries in Country Group A:5, or for return to the United States, so long as such items are not for use in nuclear, "missile," or chemical or biological weapons activities.

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**PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION**

4. The authority citation for 15 CFR part 748 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

5. Section 748.15 is amended by revising paragraphs (a)(2) and (d) introductory text to read as follows:

**§ 748.15 Authorization Validated End-User (VEU).**

\* \* \* \* \*

(a) \* \* \*

(2) In evaluating an end user for eligibility under authorization VEU, the ERC will consider a range of information, including such factors as: the entity's record of exclusive engagement in appropriate end-use activities; the entity's compliance with U.S. export controls; the need for an on-site review prior to approval; the entity's capability of complying with the requirements of authorization VEU; the entity's agreement to on-site reviews by representatives of the U.S. Government to ensure adherence to the conditions of the VEU authorization; and the entity's

relationships with U.S. and foreign companies. In addition, when evaluating the eligibility of an end user, the ERC will consider the status of export controls and the support and adherence to multilateral export control regimes of the government of the eligible destination.

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(d) *End-use restrictions.* Items obtained under authorization VEU in China may be used only for civil end uses and may not be used for any activities described in part 744 of the EAR. Items obtained under authorization VEU in India may be used for either civil or military end uses and may not be used for any activities described in part 744 of the EAR. Exports, reexports, or transfers made under authorization VEU may be made to an end user listed in Supplement No. 7 to this part only if the items will be consigned to and for use by the validated end user. Eligible end-users who obtain items under VEU may only:

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6. Paragraph (7)(ii) of the section titled *Required Information for Validated End-User Authorization Requests* in Supplement No. 8 to part 748 is revised to read as follows:

**Supplement No. 8 to Part 748—Information Required in Requests for Validated End-User (VEU) Authorization**

\* \* \* \* \*

*Required Information for Validated End-User Authorization Requests*

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(7) \* \* \*

(ii) Understands and will abide by all authorization VEU end-use restrictions, including the requirement that items received under authorization VEU will only be used for authorized end-uses and may not be used for any activities described in part 744 of the EAR;

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Dated: January 6, 2017.

Kevin J. Wolf

Assistant Secretary for Export Administration

[FR Doc. 2017-00439 Filed: 1/18/2017 8:45 am; Publication Date: 1/19/2017]